

## ***FISH & WILDLIFE COMMISSION AGENDA ITEM COVER SHEET***

**Meeting Date:** May 22, 2014

**Agenda Item:** Cow Creek Instream Flow Lease

**Division:** Fisheries

**Action Needed:** Endorsement to Proceed

**Time Needed on Agenda for this Presentation:** 10 minutes

### **Background**

The dam on Cow Creek Reservoir on the east side of the Bears Paw Mountains was repaired as part of a Future Fisheries Project approved by the Commission in August 2010. Cow Creek above the reservoir supports a brook trout fishery, while Cow Creek Reservoir supports a popular mixed fishery including walleye, tiger muskellunge, yellow perch, channel catfish, black crappie and brook trout. The project agreement calls for the owner, Sand Creek Ranch, not to divert water from Cow Creek Reservoir or Cow Creek for a period of 20 years. In 2013, DNRC completed its examination of the associated water rights as part of the general adjudication. Now that the review is completed, a portion of the water rights should be temporarily changed to instream flow, which requires Commission approval. If the water lease is approved, FWP will make application to DNRC to temporarily change a portion of the landowner's water right to instream in Cow Creek. There would be no additional monetary compensation for the water right lease beyond that which has already been provided through the Future Fisheries Improvement Program.

### **Public Involvement Process & Results**

The Future Fisheries Improvement Program's review panel evaluated the project as part of a public review process and recommended approval. The Commission approved the Future Fisheries funding of the project. In order to change a portion of the water right to instream flow, FWP must make application to DNRC. This application would be noticed to the public, and potentially affected parties would have the opportunity to comment on the change to instream flow. In addition, DNRC would conduct an environmental review of the proposed change to instream flow.

### **Alternatives and Analysis**

An alternative would be to not lease the water for instream flow. Because the Future Fisheries project agreement already requires that water not be diverted from Cow Creek for 20 years, this alternative may jeopardize Sand Creek Ranch's water rights, as they could be considered to be abandoned if not put to beneficial use. Additionally, the water could not be protected from diversion or call by junior water-rights holders.

### **Agency Recommendation & Rationale**

FWP recommends the Commission direct FWP to negotiate a water-right lease with Sand Creek Ranch to protect their water rights and to protect the flow in Cow Creek from diversion to satisfy junior water rights.

### **Proposed Motion**

I move that FWP negotiate a water-right lease on Cow Creek with Sand Creek Ranch, subject to final approval of the Commission.